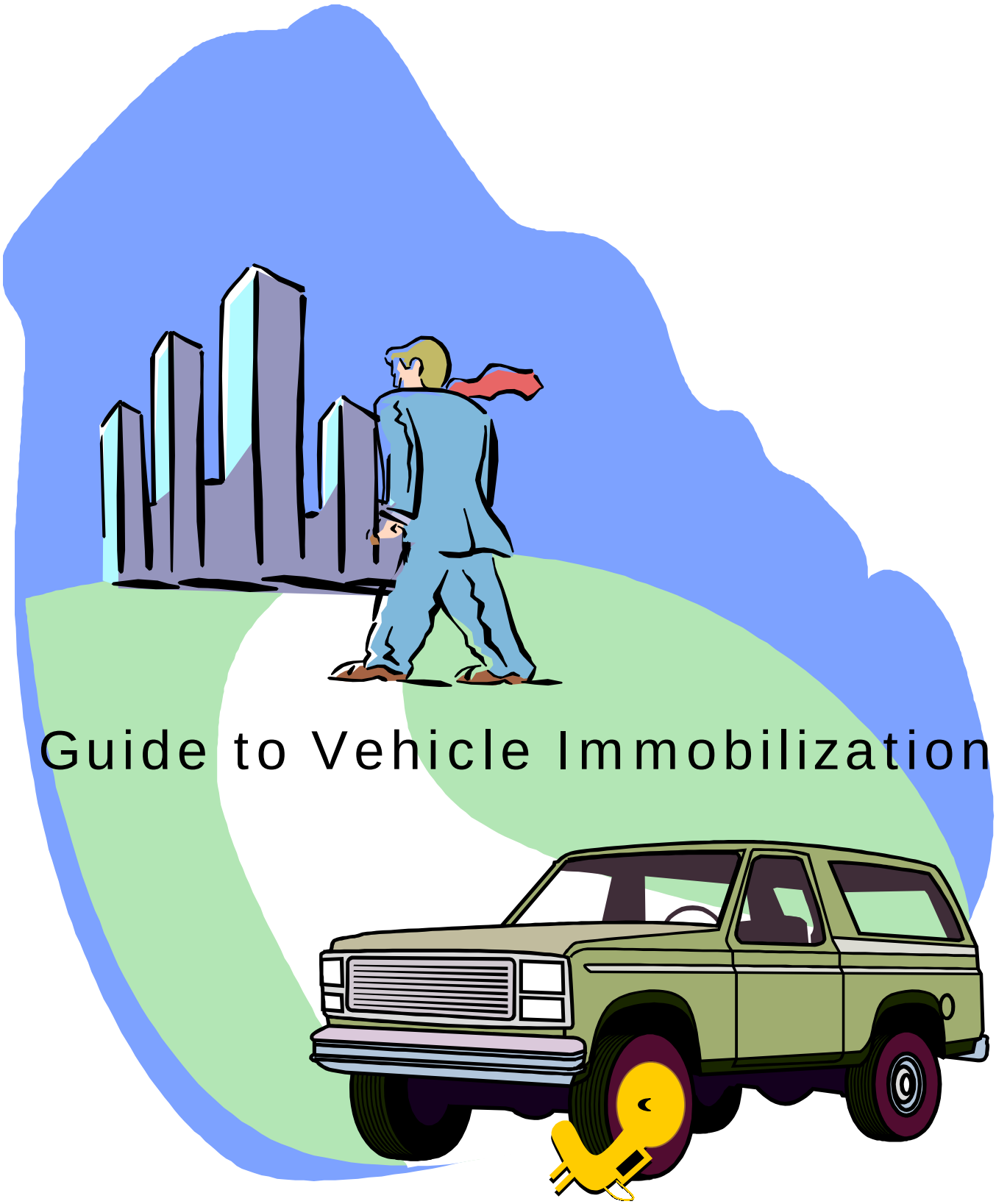

Guide to Vehicle Immobilization

Guide to Vehicle Immobilization

Michigan Judicial Institute

By **Tobin L. Miller, J.D.**

This material was developed through a project funded by the Michigan Office of Highway Safety Planning and the U.S. Department of Transportation.

Michigan Supreme Court

- Hon. Maura D. Corrigan, *Chief Justice*
- Hon. Michael F. Cavanagh, Hon. Elizabeth A. Weaver, Hon. Marilyn Kelly, Hon. Clifford W. Taylor, Hon. Robert P. Young, Jr., Hon. Stephen J. Markman, *Justices*
- John D. Ferry, Jr., *State Court Administrator*

Michigan Judicial Institute Staff

- Dawn F. McCarty, *Interim Director*
- Cathy L. Cecot, *Court Administrative Team Program Assistant*
- Linda Clewly, *Learning Center Administrative Assistant*
- Anne DeMarco, *Court Professional Team Program Assistant*
- Vickie L. Eggers, *Distance Learning Specialist*
- Sheila J. Kallish, *Distance Learning Team/Court Support Team Program Assistant*
- Vicky Kruckeberg, *Public Learning Center Coordinator*
- Denise D. Kruger, *Administrative Assistant*
- Cynthia J. Kruska, *Court Administrative Team/Court Support Team Program Manager*
- Mary Ann McDaid, *Multi-Media Development Specialist*
- Tobin L. Miller, *Judicial Education Team/Publications Team Program Manager*
- Tricia A. Shaver, *Judicial Education Team/Publications Team Program Assistant*
- Lori Ann Sheets, *Publications Team/Conference Center Assistant*
- Thomas Smith, *Research Attorney*
- Peter C. Stathakis, *Court Professional Team Program Manager*
- Cathy Weitzel, *Judicial Education/Conference Center Coordinator*

Acknowledgments

The *Guide to Vehicle Immobilization* contains discussion of the law governing vehicle immobilization in Michigan, "best practice" suggestions, and court forms. Before beginning to write this guide, the author sent all Michigan trial courts a questionnaire regarding vehicle immobilization practices in each court. The questionnaire sought information on problems and "best practices" and asked for court forms used in immobilization cases. Courts' responses to the questionnaire and court forms were then incorporated into this guide. The Michigan Judicial Institute (MJI) thanks all who responded to the questionnaire: your participation in this project will help improve vehicle immobilization practices in Michigan.

The *Guide to Vehicle Immobilization* was prepared by Tobin L. Miller, MJI Publications Administrator. Thomas Smith, MJI Research Attorney, served as editor for the project. Mary Ann McDaid, MJI Multi-Media Development Specialist, was responsible for page layout, cover design, and coordination of reproduction. Lori Ann Sheets, MJI Program Assistant, assisted with distribution.

The author of this guide was greatly assisted by Ms. Sandi Hartnell, Management Analyst, Trial Court Services Division, State Court Administrative Office, and Ms. Peggy Leece, Court Liaison, Driver's License Appeal Division, Department of State, who reviewed draft text and provided valuable feedback.

The Michigan Judicial Institute was created in 1977 by the Michigan Supreme Court. MJI is responsible for providing educational programs, distance learning opportunities, and written materials for Michigan judges and court personnel. In addition to formal seminar offerings, MJI is engaged in a broad range of publication activities, services, and projects that are designed to enhance the professional skills of all those serving in the Michigan court system. MJI welcomes comments and suggestions. Please send them to: **Michigan Judicial Institute, P.O. Box 30205, Lansing, MI 48909, (517) 334-7805.**

Dawn F. McCarty, J.D.
Interim Director, Michigan Judicial Institute

John D. Ferry, Jr.
State Court Administrator

May 24, 2002

Guide to Vehicle Immobilization

Part 1—Legal Requirements & "Best Practice" Suggestions

1.1 Introduction and Scope 2
1.2 What Methods May Be Used to Immobilize a Vehicle? 2
1.3 May a Vehicle Not Owned or Leased by the Offender Be Immobilized? 4
1.4 Are Some Vehicles Exempt From Immobilization? 7
1.5 Which Offenses Require Vehicle Immobilization to Be Ordered? 8
1.6 Which Offenses Permit Vehicle Immobilization to Be Ordered? 9
1.7 What Is a "Prior Conviction"? 9
1.8 What Is a "Prior Suspension, Revocation, or Denial"? 11
1.9 How Are Convictions for Attempted Offenses Treated? 11
1.10 Are There Offenses to Which Vehicle Immobilization Does Not Apply?.. 12
1.11 How Long May a Vehicle Be Immobilized? 13
A. Mandatory Immobilization 13
B. Immobilization in the Court's Discretion 14
C. Table Summarizing Immobilization Periods—§625 Offenses 14
D. Table Summarizing Immobilization Periods—§904 Violations 15
1.12 When Is a Police Officer Required to Issue a "Paper Plate"? 16
1.13 How Are Cases That May Result in Immobilization Initiated? 18
1.14 When Does Immobilization Begin? 19
1.15 May the Defendant Sell or Otherwise Transfer the Immobilized Vehicle? 19
1.16 May a Person Who Buys or Leases a Vehicle to Circumvent Immobilization Be Punished? 20
1.17 May the Defendant Obtain Another Vehicle During the Immobilization Period? 21
1.18 What Are the Penalties for Removing an Immobilization Device or Driving an Immobilized Vehicle? 21
1.19 What Happens When a Police Officer Stops a Vehicle Driven in Violation of an Immobilization Order? 22
1.20 May the Court Revoke a Defendant's Probation for Failure to Comply With an Immobilization Order? 22
1.21 May a Person Be Held in Contempt of Court for Failure to Comply With an Immobilization Order? 23
1.22 Are There Other Penalties for Failure to Comply With an Immobilization Order? 24
1.23 What Are the Abstracting Requirements? 25

Part 2—Appendixes

Appendix 1: SCAO Form MC 267—Order for Vehicle Immobilization

Appendix 2: Notice and Order of Immobilization

Appendix 3: Immobilization Options and Motion to Terminate Immobilization of Vehicle

Appendix 4: Immobilization Process Checklist and Petition for Release of Immobilization

Appendix 5: Affidavit

Appendix 6: Petition Contesting Immobilization of Motor Vehicle

Part 1—Legal Requirements & "Best Practice" Suggestions

1.1 Introduction and Scope

Vehicle immobilization limits access to vehicles by offenders who violate laws prohibiting "drunk driving" and driving with a suspended or revoked license. Vehicle immobilization is part of a statutory scheme that increases penalties depending upon the number and frequency of the offender's violations of these laws. This publication is intended to provide guidance to courts and others in imposing this sanction.

Part 1 of this guide provides an overview of the law governing vehicle immobilization in Michigan and incorporates "best practice" suggestions from Michigan trial courts. Part 2 of this guide contains forms from Michigan courts. The "best practice" suggestions and forms were taken from responses to a questionnaire that was sent to all Michigan trial courts.

Vehicle sanctions other than immobilization are not discussed in detail in this Guide. For a complete discussion of other vehicle sanctions, see *Traffic Benchbook (Revised Edition)* (MJI, 1999), Volume 2.

1.2 What Methods May Be Used to Immobilize a Vehicle?

No single method of immobilizing a vehicle is prescribed by statute. MCL 257.904e(1) authorizes courts to order vehicle immobilization "by the use of any available technology approved by the court that locks the ignition, wheels, or steering of the vehicle or otherwise prevents any person from operating the vehicle or that prevents the defendant from operating the vehicle." The statute further gives the court discretion to order storage of an immobilized vehicle in a place and manner it deems appropriate. MCL 257.904e(6) states that "to the extent that a local ordinance regarding the storage or removal of vehicles conflicts with an order of immobilization issued by the court, the local ordinance is preempted."

Courts may use a single method to immobilize vehicles, they may use several methods in conjunction with one another (e.g., gas cap lock and immobilization sticker), or they may provide defendants with a list of options. Providing defendants with a list of options from which to choose complies with statutory requirements and saves court resources.

Immobilization techniques include the following:

- ignition lock;
- steering column lock or "club";
- wheel "boot";

- gas cap lock;
- impoundment;
- tethering the defendant; and
- immobilization sticker.

Among Michigan courts, the most frequently used methods are the steering column lock or "club," tethering the defendant, and vehicle impoundment.

Steering column lock or "club." A steering column lock or "club" should be installed by a law enforcement officer or probation officer. When the device is installed, the officer should record the mileage; at the end of the immobilization period, the mileage should be checked to determine if the device has been circumvented. Random inspections should be conducted in conjunction with these methods to ensure compliance with the immobilization order.

Tethering the offender. Tethering the offender prevents the offender from operating a vehicle while allowing family members or others access to that vehicle. Charney, *Repeat offender driving reform: summary of key elements and practice tips,* 79 Mich B J 810, 813 (2000). SCAO Form 267 contains a check-box for ordering the offender and vehicle to be immobilized using a tether.

Vehicle impoundment. The vehicle used in the offense will be impounded at the time of arrest if there is no licensed and sober driver to move the vehicle. If this occurs, the offender may be given a choice of continuing the impoundment as the method of immobilizing the vehicle or paying the requisite fees to have the vehicle towed to his or her residence. If the offender chooses the latter course, another immobilization method must then be used.

"Immobilization officers." Several courts in Michigan assign a single employee to install and remove immobilization devices and monitor offender compliance. If resources allow, courts may wish to consider this option.

Ordering the defendant to pay the costs of immobilization. The defendant may be ordered to pay the costs of immobilization and storage. MCL 257.904e(1). MCR 1.110 states that "[f]ines, costs, and other financial obligations imposed by the court must be paid at the time of assessment, except when the court allows otherwise, for good cause shown."

Representatives of several Michigan courts expressed concern that the costs of immobilization are too high for many offenders to pay. One Michigan court "mediated" an agreement with its service provider to allow defendants who could not pay immobilization costs "up front" to pay in installments. If

the defendant failed to make a payment, the service provider was authorized to sell the car to recover its costs.

Often the costs of immobilization will exceed the vehicle's value. One Michigan court has a policy that allows the defendant to sell such a vehicle and pay the proceeds to the city's impound lot, and the city agrees to forego any deficiency.

Certification requirements. In a case where immobilization is ordered, the defendant shall provide the court with the identification and registration plate numbers of the vehicle involved in the violation. MCL 257.904d(3). MCL 257.904e(8) requires certification that a vehicle ordered immobilized has in fact been immobilized. That statute states:

> "The court shall require the defendant or a person who provides immobilization services to the court under this section to certify that a vehicle ordered immobilized by the court is immobilized as required."*

SCAO Form MC 267 may be used for this purpose. The form may be faxed to a service provider for certification, or the offender may be required to return the certification to the court. One Michigan court emphasizes the importance of clear communication regarding vehicle immobilization. In this court, the agency immobilizing vehicles calls or e-mails the court only after a vehicle is actually immobilized.

The court should set a reasonable deadline for the defendant to comply with the order of immobilization. Several Michigan courts also give the defendant the option of selling the vehicle and providing the court with proper proof of the sale before the immobilization deadline.*

*See Section 1.15, below, for limitations on the sale of vehicles subject to immobilization.

1.3 May a Vehicle Not Owned or Leased by the Offender Be Immobilized?

A court may immobilize a vehicle if it was used by the offender to violate the applicable law. MCL 257.904d(8)(b) defines "immobilization" of a vehicle to mean "requiring *the motor vehicle involved in the violation [to be] immobilized* in a manner provided in section 904e." (Emphasis added.)

However, if the offender does not own or lease the vehicle used in the violation, the court's authority to immobilize that vehicle is limited. Under MCL 257.904d(4)(a)–(b), immobilization may be ordered if authorized or required by statute, and:

- The defendant owns, co-owns, leases, or co-leases the vehicle; or
- The vehicle's owner, co-owner, lessee, or co-lessee knowingly permitted the defendant to drive the vehicle in violation of

Vehicle Code §625(2) or §904(2), regardless of whether a conviction resulted.

Determining vehicle ownership. The arresting officer may provide proof of vehicle ownership when the ticket or complaint is presented to the court. A court may obtain a vehicle registration record through the Secretary of State or the Law Enforcement Information Network (LEIN). See MCL 257.221. The court may, of course, also ask the offender at arraignment or thereafter whether he or she owns the vehicle used during the alleged offense.

Notification of owner or lessee that vehicle has been immobilized. There is no statutory requirement that a non-offender owner or lessee receive notice before the immobilization or impoundment of his or her vehicle. See MCL 257.904c–257.904e. Although persons have a substantial interest in uninterrupted use of their vehicles, there is no procedural due process* right to notice and a hearing prior to impoundment of a vehicle for improper registration. *Harris v Calhoun County*, 127 F Supp 2d 871, 876 (WD Mich, 2001), relying on *Scofield v City of Hillsborough*, 862 F2d 759, 762–64 (CA 9, 1988). However, federal courts have held that notice of and a right to a prompt post-impoundment hearing is constitutionally required. *Harris*, *supra*, and *Towers v City of Chicago*, 979 F Supp 708, 714 (ND Ill, 1997). In *Towers*, the court held that the city was "not obligated to locate and notify every registered owner" prior to impoundment of a vehicle not in the owner's possession when it was impounded. Instead, the city was required to use procedures "reasonably calculated" to notify such owners, and this requirement was satisfied by the ticketing police officer giving notice of the owner's right to a hearing to the person in possession of the vehicle at the time of the alleged violation. *Towers*, *supra* at 715.

*The United States Supreme Court has held that denying an "innocent owner" defense in a civil forfeiture proceeding does not violate an owner's substantive due process rights. *Bennis v Michigan*, 516 US 442 (1996). Because MCL 257.904d does provide such a defense, the statute presumably does not violate substantive due process protections. See *Tower*, *infra* at 717–20.

Procedures used by Michigan courts. Several Michigan courts do not conduct "innocent owner" hearings: if such courts determine that the defendant does not own or lease the vehicle involved in the violation, these courts will not immobilize the vehicle. Other courts always conduct a hearing or conduct a hearing upon request before immobilizing a vehicle not owned or leased by the defendant. The Michigan courts that do conduct such hearings use different procedures to notify a vehicle's owner or lessee that the vehicle may be or has been immobilized and provide them an opportunity to be heard. Some of these procedures are summarized below.

- Several courts send a notice of adjudication and a notice to appear at sentencing to the owner or lessee. At sentencing, the court takes testimony on the owner's knowledge of the circumstances surrounding the offense.

- One court issues an order to the owner or lessee to show cause why the vehicle should not be immobilized. If the owner or lessee appears at the hearing, he or she has the burden of proving that the vehicle should not be immobilized.

*See Appendix 5 for a sample affidavit.

- One court requires the owner or lessee to file an affidavit with the court stating that he or she had no knowledge of the circumstances surrounding the offense. If the owner or lessee does not file such an affidavit, the court immobilizes the vehicle.*

- Several courts require the prosecuting or city attorney to file a motion and request a hearing.

- A few courts set a motion hearing if the owner or lessee is not present at sentencing when an immobilization order is issued. If the owner or lessee appears at the motion hearing, the order is upheld or dismissed. If the owner or lessee does not appear at the motion hearing, the order stands.

- One court issues an order to immobilize the vehicle if it appears from the presentence investigation report that the owner or lessee had knowledge of the circumstances surrounding the offense. The court sends a copy of the order to the owner or lessee along with a notice of his or her right to request a hearing. The court may uphold or dismiss the order following the hearing.

*See Appendix 4.

- A few courts send a petition to release an immobilization order to the owner or lessee, who must serve the prosecuting attorney with a copy and file the petition with the court. The court then holds a hearing.*

Thus, a hearing to determine whether an owner knowingly permitted the offender to drive the vehicle may occur before, during, or after sentencing. To conserve judicial resources, courts may consider conducting "innocent owner" hearings at sentencing. In any case, if notice is provided, it should be given in a timely fashion to allow the owner a meaningful opportunity to be heard.

Motion fees. There are no motion fees in criminal cases. MCR 2.119(G)(3)(a).

Rules of evidence and standard of proof at motion hearings. In general, rules of evidence, other than those governing privileges, do not apply during motion hearings. MRE 104(a) and 1101(b)(1). The "preponderance of evidence" standard applies.

Affidavits. When a motion is based on facts not appearing on the record, the trial court has discretion to require affidavits. MCR 2.119(E)(2). Affidavits must conform to the requirements of MCR 2.113(A) (an affidavit must be verified by oath or affirmation) and MCR 2.119(B). Pursuant to MCR 2.119(B)(1), an affidavit filed in support of or in opposition to a motion must:

> "(a) be made on personal knowledge;

> "(b) state with particularity facts admissible as evidence establishing or denying the grounds stated in the motion; and
>
> "(c) show affirmatively that the affiant, if sworn as a witness, can testify competently to the facts stated in the affidavit."

Rules of evidence and standard of proof at sentencing hearings. The rules of evidence, other than those governing privileges, do not apply to sentencing hearings. MRE 1101(b)(3). At sentencing hearings, the court must apply a "preponderance of the evidence" standard when resolving factual disputes. *People v Walker*, 428 Mich 261, 267–68 (1987).

When does an owner or lessee "knowingly allow" use of his or her vehicle? In the criminal law context, a person who acts "knowingly" acts with knowledge and "a purpose to do wrong." *People v Gould*, 225 Mich App 79, 86 (1997). "Guilty knowledge means not only actual knowledge, but also constructive knowledge through notice of facts and circumstances from which guilty knowledge may be inferred." *People v Scott*, 154 Mich App 615, 617 (1986).

It therefore does not appear that the owner or lessee must be in the vehicle at the time of the violation before a court may infer guilty knowledge of the owner or lessee.

1.4 Are Some Vehicles Exempt From Immobilization?

The immobilization provisions in MCL 257.904d do not apply in cases involving certain vehicles. MCL 257.904d(7) provides that the following vehicles may not be immobilized:

- Rental vehicles. Because MCL 257.37(a) defines a vehicle's "owner" as someone having exclusive use of a vehicle for more than 30 days, the exception for rented vehicles applies only to rental agreements for 30 days or less.
- Vehicles registered in other states.
- Vehicles owned by the federal or state government, or by a local unit of government.
- Vehicles not subject to registration under §216 of the Michigan Vehicle Code.

1.5 Which Offenses Require Vehicle Immobilization to Be Ordered?

Depending upon the offense and number of prior offenses or violations, vehicle immobilization may be a mandatory sanction, or one imposed at the court's discretion. Mandatory immobilization is discussed in this section; discretionary or permissive immobilization is discussed in Section 1.6, below. Periods of immobilization are discussed in Section 1.11, below.

MCL 257.904d(1)–(2) require vehicle immobilization upon conviction of the following violations of §625 and §904 of the Michigan Vehicle Code:

- Any violation of §904(4) or (5) (DWLS causing death or serious impairment of a body function).
- A moving violation committed while driving with a suspended or revoked license and occurring within seven years of two or more prior suspensions, revocations, or denials imposed under §904(10), (11), or (12) (which impose additional licensing sanctions on persons who commit moving violations while driving with a suspended or revoked license), or former §904(2) or (4).*

*Note that a prior *conviction* is not required. See Section 1.8, below.

- Any violation of §625(4) or (5) (OUIL/OUID/UBAC/OWI causing death or serious impairment of a body function).
- A violation of §625(1), (3), or (7) (OUIL, OUID, UBAC, OWI, or child endangerment) within seven years after one prior conviction or within ten years after two or more prior convictions of any of the following offenses under a Michigan law, or under a substantially corresponding local ordinance or law of another state:*

*The listed prior convictions are taken from Vehicle Code §904d(8).

  - — OUIL/OUID/UBAC under §625(1).
  - — OWI under §625(3).
  - — OUIL/OUID/UBAC/OWI causing death or serious impairment of a body function under §625(4)–(5).
  - — Zero tolerance violations under §625(6); however, only one such conviction may count as a prior conviction for purposes of immobilization.
  - — Child endangerment under §625(7).
  - — Operating a commercial motor vehicle with an unlawful bodily alcohol content, under §625m.
  - — Former §625(1) or (2) or former §625b. Former §625(1) provided criminal penalties for OUIL and OUID. Former

§625(2) prohibited driving with a blood alcohol content of 0.10 percent or more. Former §625b provided criminal penalties for OWI.

— Negligent homicide, manslaughter, or murder resulting from the operation of a vehicle or an attempt to commit any of those crimes.

— Overtaking an emergency vehicle causing injury in violation of MCL 257.653a(3).

1.6 Which Offenses Permit Vehicle Immobilization to Be Ordered?

Under MCL 257.904d(1)–(2), the court has discretion to order immobilization upon conviction of the following offenses:

- First offenses under §625(1), (3), or (7) (OUIL, OUID, UBAC, OWI, or child endangerment), or a local ordinance substantially corresponding to §625(1) or (3).
- A moving violation committed while driving with a suspended/revoked license and occurring within seven years of a prior suspension, revocation, or denial imposed under §904(10), (11), or (12) (which impose additional licensing sanctions on persons who commit moving violations while driving with a suspended/revoked license), or former §904(2) or (4).*

*Note that a prior *conviction* is not required. See Section 1.8, below.

1.7 What Is a "Prior Conviction"?

If the defendant has "prior convictions" for certain offenses, he or she may be subject to mandatory vehicle immobilization. "Prior conviction" is defined in MCL 257.904d(8)(a)(i)–(iii). "Prior conviction" means a conviction of any of the following offenses, whether under a law of the State of Michigan, a local ordinance substantially corresponding to a Michigan law, or a law of another state substantially corresponding to a Michigan law:

- OUIL, OUID, or UBAC under §625(1).
- OWI, under §625(3).
- OUIL, OUID, UBAC, or OWI causing death of another, under §625(4).
- OUIL, OUID, UBAC, or OWI causing serious impairment of a body function of another, under §625(5).

- Being under 21 years of age and operating a vehicle with any bodily alcohol content ("zero-tolerance violations"), under §625(6). However, only one violation or attempted violation of §625(6) or a corresponding statute or ordinance from another jurisdiction may be counted as a prior conviction.
- Child endangerment, under §625(7).
- Operating a commercial motor vehicle with an unlawful bodily alcohol content, under §625m.
- Former §625 (1) or (2) or former §625b. Former §625(1) provided criminal penalties for OUIL and OUID. Former §625(2) prohibited driving with a blood alcohol content of 0.10 percent or more. Former §625b provided criminal penalties for OWI.
- Negligent homicide, manslaughter, or murder resulting from the operation of a vehicle or an attempt to commit any of those crimes.
- Overtaking an emergency vehicle causing injury in violation of MCL 257.653a(3).

MCL 257.8a defines "conviction" as "a final conviction, the payment of a fine, a plea of guilty or nolo contendere if accepted by the court, or a finding of guilt for a criminal law violation . . . ."

In *Johnson v Secretary of State*, 224 Mich App 158 (1997), the Court of Appeals considered the meaning of "substantial correspondence" in determining whether a driver convicted under Michigan's OUIL statute would be subject to license revocation as a repeat offender based on a previous conviction under a Wisconsin drunk driving statute. The Court noted that the offense of drunk driving was defined in similar terms under both state statutes at issue; however, violation of the Wisconsin statute constituted a civil infraction for which no jail term would be imposed. Nonetheless, the Court found that the Wisconsin statute was "substantially corresponding" to Michigan's OUIL statute and upheld the Secretary of State's decision to revoke the driver's license. Despite the difference in the categorization of the Michigan and Wisconsin offenses, the Court noted that 1) it is the offense rather than the penalty that must correspond to the Michigan statute; 2) the procedures for adjudicating first offense OUIL violations in Michigan and Wisconsin were similar; 3) the driver was afforded procedural protections similar to those in a criminal proceeding; and 4) like Michigan, Wisconsin provides criminal penalties for second OUIL offenses.

See also *Kutzli v Secretary of State,* 152 Mich App 38, 41 (1986) (Another state's statute substantially corresponds to a Michigan statute where it contains language similar to the Michigan statute or proscribes the same

conduct as the Michigan statute; procedures by which a conviction is obtained are not determinative).

The Vehicle Code defines the term "law of another state" to mean "a law *or ordinance* enacted by another state or by a local unit of government in another state." MCL 257.24c (emphasis added). Under this definition, violations of local ordinances in other states may be considered for purposes of penalty enhancement under repeat offender provisions that encompass offenses committed under the "law of another state."

Under the Vehicle Code, a "state" is "any state, territory, or possession of the United States, Indian country as defined in 18 USC 1151, the District of Columbia, or any province of the Dominion of Canada." MCL 257.65.

If two or more of the above convictions arise out of the same transaction, only one conviction shall be used to determine whether the defendant has a prior conviction. MCL 257.904d(9).

1.8 What Is a "Prior Suspension, Revocation, or Denial"?

Under MCL 257.904d(2), a moving violation committed while driving with a suspended or revoked license and occurring within a specified number of years of prior suspensions, revocations, or denials imposed under §904(10), (11), or (12) or former §904(2) or (4) may or shall result in vehicle immobilization. Those who unlawfully operate a vehicle or commit a moving violation while driving with a suspended or revoked license are subject to mandatory additional periods of suspension or revocation under §904(10)–(12). However, an offense occurring during a first-time suspension for failing to appear in court (FAC) or failing to comply with a judgment (FCJ) under MCL 257.321a will not count as a prior offense for purposes of enhancement under §904(10)–(12). This exemption for an FAC or FCJ suspension violation applies only once during a person's lifetime. However, if there is a subsequent FAC or FCJ suspension violation, both it and the first violation are counted for purposes of enhancement. MCL 257.904(18).

MCL 257.904d(2) does not apply to suspensions, revocations, or denials based on violations of the Support and Parenting Time Enforcement Act, MCL 552.601 et seq.

1.9 How Are Convictions for Attempted Offenses Treated?

Under MCL 257.904d(8)(a)(i)–(ii), a "prior conviction" is defined as conviction of an enumerated offense or conviction of an attempt to commit an enumerated offense. Thus, convictions of attempt to commit an enumerated offense qualify as "prior convictions" for purposes of immobilization.

Moreover, MCL 257.204b(1) requires a court to treat a conviction for an attempted violation of the Michigan Vehicle Code in the same manner as a completed violation when ordering vehicle sanctions, including immobilization. That statutory provision states as follows:

> "When assessing points, taking licensing or registration actions, or imposing other sanctions under this act for a conviction of an attempted violation of a law of this state, a local ordinance substantially corresponding to a law of this state, or a law of another state substantially corresponding to a law of this state, the secretary of state or the court shall treat the conviction the same as if it were a conviction for the completed offense.

1.10 Are There Offenses to Which Vehicle Immobilization Does Not Apply?

The immobilization provisions in MCL 257.904d do not apply in cases involving certain offenses or violations. MCL 257.904d(7) provides that immobilization may not be ordered for any of the following:

- Violations of Chapter II of the Vehicle Code, regarding administration, registration, certificate of title, and anti-theft, or a substantially corresponding local ordinance.
- Violations of Chapter V of the Vehicle Code, the Financial Responsibility Act, or a substantially corresponding local ordinance.
- Violations for failure to change address, under the Vehicle Code or a substantially corresponding local ordinance.
- Parking violations, under the Vehicle Code or a substantially corresponding local ordinance.
- Bad check violations, under state law, or a substantially corresponding local ordinance.
- Equipment violations, under the Vehicle Code or a substantially corresponding local ordinance.

- A pedestrian, passenger, or bicycle violation, other than a violation of:

  — MCL 436.1703(1) or (2) (purchase, consumption, or possession of alcohol by minors); or,

  — MCL 257.624a or 624b (open container, minor in possession of alcohol); or,

  — A local ordinance substantially corresponding to the foregoing statutes.

1.11 How Long May a Vehicle Be Immobilized?

A. Mandatory Immobilization

MCL 257.904d(1)–(2) require vehicle immobilization upon conviction of the following violations of Vehicle Code §625 and §904. For each violation requiring immobilization, the following periods of immobilization apply:

- Any violation of §625(4) or (5) (OUIL/OUID/UBAC/OWI causing death or serious impairment of a body function):

  — First-time offenders are subject to immobilization for a maximum 180 days.

  — Offenders with one conviction within seven years after a prior conviction are subject to immobilization for not less than 90 days or more than 180 days.

  — Offenders with two or more prior convictions within ten years are subject to immobilization for not less than one year or more than three years.

- Any violation of §904(4) or (5) (DWLS causing death or serious impairment of a body function): first-time offenders and offenders with one prior §904 suspension within seven years are subject to immobilization for not more than 180 days.

- A moving violation committed while driving with a suspended or revoked license and occurring within seven years of two or more prior suspensions, revocations, or denials imposed under §904(10), (11), or (12) (which impose additional licensing sanctions on persons who commit moving violations while driving with a suspended/revoked license), or former §904(2) or (4):

  — Offenders with any combination of two or three prior suspensions, revocations, or denials under §904(10), (11), or

(12), or former §904(2) or (4) within the past seven years are subject to immobilization for not less than 90 days or more than 180 days.

— Offenders with any combination of four or more prior suspensions, revocations, or denials under §904(10), (11), or (12), or former §904(2) or (4) within the past seven years are subject to immobilization for not less than one year or more than three years.

- A violation of §625(1), (3), or (7) (OUIL, OUID, UBAC, OWI, or child endangerment) within seven years after one prior conviction or within ten years after two or more prior convictions:

  — Offenders with one conviction within seven years after a prior conviction are subject to immobilization for not less than 90 days or more than 180 days.

  — Offenders with two or more prior convictions within 10 years are subject to immobilization for not less than one year or more than three years.

B. Immobilization in the Court's Discretion

A court has discretion to order immobilization for the following violations. For each violation permitting a court to order immobilization, the following periods of immobilization apply:

- For first offenders under §625(1), (3), or (7) (OUIL, OUID, UBAC, OWI, or child endangerment), the court has discretion to order vehicle immobilization for not more than 180 days. MCL 257.904d(1)(a).

- For a moving violation committed while driving with a suspended/revoked license and occurring within seven years of one prior suspension, revocation, or denial under §904(10), (11), or (12), or former §904(2) or (4) the court may order immobilization for not more than 180 days. MCL 257.904d(2)(a).

C. Table Summarizing Immobilization Periods—§625 Offenses

The table below summarizes the periods of mandatory and permissive vehicle immobilization for violations of the "drunk driving" provisions of §625 of the Michigan Vehicle Code. See Section 1.11(D), below, for a similar chart dealing with §904 violations. Sections 1.7 and 1.9 above for definitions of "prior conviction."

Offense	1st offense (no prior convictions)	2d offense (1 prior §625 conviction within 7 years)	3d or subsequent offense (2 or more prior §625 convictions within 10 years)
OUIL/UBAC/OUID—§625(1)	§904d(1)(a): Permissive up to 180 days	§904d(1)(c): Required 90 to 180 days	§904d(1)(d): Required 1 to 3 years
OWI—§625(3)	§904d(1)(a): Permissive up to 180 days	§904d(1)(c): Required 90 to 180 days	§904d(1)(d): Required 1 to 3 years
OUIL/OWI Death/ Injury—§625(4)–(5)	§904d(1)(b): Required up to 180 days	§904d(1)(c): Required 90 to 180 days	§904d(1)(d): Required 1 to 3 years
Zero Tolerance —§625(6)	None	None	None
Endangering Child by Other §625 Offense—§625(7)(a)	§904d(1)(a): Permissive up to 180 days	§904d(1)(c): Required 90 to 180 days	§904d(1)(d): Required 1 to 3 years
Endangering Child by Zero Tolerance Offense—§625(7)(b)	§904d(1)(a): Permissive up to 180 days	§904d(1)(c): Required 90 to 180 days	§904d(1)(d): Required 1 to 3 years

D. Table Summarizing Immobilization Periods—§904 Violations

The table below summarizes the periods of mandatory and permissive vehicle immobilization for violations of the provisions of §904 of the Michigan Vehicle Code, which prohibit driving with a suspended or revoked license. See Section 1.11(C), above, for a similar chart dealing with §625 violations. See Section 1.8, above, for a definition of "prior suspension, revocation, or denial."

Offense	No prior suspensions	1 prior §904 suspension within 7 years	2 prior §904 suspensions within 7 years	3 prior §904 suspensions within 7 years	4 or more prior §904 suspensions within 7 years
Any criminal offense or civil infraction committed during a period of suspension, revocation, or denial	None	§904d(2)(a): permissive up to 180 days	§904d(2)(c): 90 to 180 days required	§904d(2)(c): 90 to 180 days required	§904d(2)(d): 1 to 3 years required
DWLS Causing Death or Serious Injury—§904(4)–(5)	§904d(2)(b): Required up to 180 days	§904d(2)(b): Required up to 180 days	§904d(2)(c): Required 90 to 180 days	§904d(2)(c): Required 90 to 180 days	§904d(2)(d): 1 to 3 years required

1.12 When Is a Police Officer Required to Issue a "Paper Plate"?

MCL 257.904c(1) states as follows:

> "When a peace officer detains the driver of a motor vehicle for a violation of law of this state or local ordinance for which vehicle immobilization is required, the peace officer shall do all of the following:
>
> > "(a) Immediately confiscate the vehicle's registration plate and destroy it.
> >
> > "(b) Issue a temporary vehicle registration plate for the vehicle in the same form prescribed by the secretary of state for temporary registration plates issued under sections 226a or 226b.
> >
> > "(c) Place the temporary vehicle registration plate on the vehicle in the manner prescribed by the secretary of state.
> >
> > "(d) Notify the secretary of state through the law enforcement information network in a form prescribed by the secretary of state that the registration plate was confiscated and destroyed, and a temporary plate was issued."

Under §904c, the registration plate is confiscated from the offending vehicle whether or not the vehicle is registered to its driver. This encourages the driver to appear in court to adjudicate the matter so the vehicle owner can

obtain a new metal registration plate. However, the following vehicles are exempt from registration plate confiscation under §904c:

- Vehicles with out-of-state registration plates.
- Tribal vehicles.
- Vehicles with international registration plates.
- Rented vehicles. Because MCL 257.37(a) defines a vehicle's "owner" as someone having exclusive use of a vehicle for more than 30 days, the exception for rented vehicles applies only to rental agreements for 30 days or less.
- In the case of double-plated vehicles, only the motorized vehicle's registration plate is removed; trailer plates will not be confiscated.

Under MCL 257.904c(2), the temporary registration plate remains valid until:

- The charges against the person are dismissed;
- The person pleads guilty or nolo contendere to the charges; or,
- The person is found guilty of or is acquitted of the charges.

The Secretary of State will not issue a registration for a vehicle with a temporary registration plate until the violation resulting in the issuance of the temporary plate is adjudicated or the vehicle is transferred to a person subject to payment of use tax. MCL 257.219(3).*

*See Section 1.15, below, for a list of persons exempt from the use tax and other information on transferring a vehicle subject to immobilization.

A temporary registration plate will also become invalid if the underlying registration expires before any of the above events take place. In this case, the temporary plate may be renewed at a Secretary of State branch office.

The following restrictions apply to vehicles with temporary registration plates affixed pursuant to §904c:

- Only a licensed and sober driver may drive the vehicle. If no such driver is available, the vehicle may be towed to an impound lot.
- The vehicle owner may purchase and register another vehicle under his or her name. The owner may not, however, transfer the temporary registration plate to the other vehicle.
- The vehicle may be sold, but not to anyone exempt from use tax under MCL 205.93 without a court order.

1.13 How Are Cases That May Result in Immobilization Initiated?

Prosecuting attorneys and law enforcement agencies should coordinate efforts to ensure that all cases that may result in vehicle immobilization are referred to the prosecuting or city attorney's office, and that the immobilization sanction is brought to the attention of the court.

*See Sections 1.5 and 1.6, above, for lists of offenses requiring or permitting vehicle immobilization.

Filing the "paper plate" with the court. MCL 257.904c(1) requires the arresting officer to issue a "paper plate" to a driver detained for a violation for which vehicle immobilization is required. This statute does not require issuance of a "paper plate" for a violation for which vehicle immobilization is discretionary with the court.* If a "paper plate" is issued, a copy should be filed with the court.

Filing a citation or complaint with the court. Several provisions allow law enforcement officers to issue citations or appearance tickets for misdemeanor traffic offenses if the offense is committed in the officer's presence and carries a maximum 93-day term of imprisonment and/or a fine. See MCL 257.727c(3), MCL 764.9c(1), and MCR 6.615(A)(1)(a). If a law enforcement officer issues a citation or appearance ticket for an offense for which vehicle immobilization may be ordered, the court may be unaware of the availability of immobilization unless the officer files a copy of a "paper plate" in court or attaches a copy of the driver's record to the citation. MCL 257.904(14) requires an arresting officer to provide the court with a copy of the driving record at arraignment in all cases involving alleged violations of §904.

If the officer does not provide a driving record, the court may obtain one pursuant to MCL 257.204a(4). That provision states in part:

> "A court or the office of the clerk of a court of this state which is electronically connected by a terminal device to the computerized central file of the secretary of state may receive into and use as evidence in any case the computer-generated certified information obtained by the terminal device from the file."

MCL 257.728(1) and MCL 257.727(b) prohibit issuance of a citation or appearance ticket for most "drunk driving" offenses. If a "drunk driving" charge may result in immobilization, the prosecuting attorney must include a statement listing the defendant's prior convictions on a complaint and information. MCL 257.625(14).

In all cases, the court file should be "flagged" or stamped to alert the judge to whether vehicle immobilization is mandatory or discretionary. A blank immobilization order may be placed in the file. Courts may also wish to keep court files for cases in which immobilization may or has been ordered separate from other case files.

1.14 When Does Immobilization Begin?

If immobilization is mandatory for an offense, the court's order for immobilization may not be suspended. MCL 257.904d(5). Periods of immobilization must begin at the end of any term of imprisonment imposed on the defendant for the violation that results in the immobilization. MCL 257.904d(6). If the defendant is released from incarceration early, there may be a period of time between the early release date and the date on which immobilization of the vehicle is ordered.

1.15 May the Defendant Sell or Otherwise Transfer the Immobilized Vehicle?

Before sentencing. Subject to certain limitations, a vehicle's owner may sell or otherwise transfer the vehicle before sentencing.* The Secretary of State will not issue a registration for a vehicle with a temporary registration plate until the violation resulting in the issuance of the temporary plate is adjudicated or the vehicle is transferred to a person subject to payment of use tax. MCL 257.219(3). MCL 257.233 prohibits the transfer of a vehicle subject to vehicle sanctions without a court order to a person exempt from use tax. MCL 257.233(4) provides:

> "During the time a vehicle is subject to a temporary registration plate, vehicle forfeiture, immobilization, registration denial, or the period from adjudication to immobilization or forfeiture under this act, a person shall not without a court order transfer or assign the title or an interest in the vehicle to a person who is not subject to payment of a use tax under [MCL 205.93]."

Persons who violate this provision are subject to misdemeanor sanctions consisting of imprisonment for not more than one year or a fine of not more than $1,000.00, or both. MCL 257.233(5).

If the offender owned the vehicle but states at sentencing that he or she sold it, the court should require proper proof of the sale and transfer of title.

After sentencing. After immobilization is ordered at sentencing, the owner may sell the vehicle, but only to persons subject to use tax, unless the court orders otherwise. Selling or transferring an immobilized vehicle to a person exempt from paying use tax without a court order is prohibited by MCL 257.904e(2). That statute states:

> "(2) A vehicle subject to immobilization under this section may be sold during the period of immobilization, but shall not be sold to a person who is exempt from paying a use tax under [MCL 205.93], without a court order."

***Inquiries regarding the sale or transfer of a vehicle subject to immobilization may be directed to the Secretary of State, Communications Division, 517.322.1460.**

Violation of this provision is a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than $100.00, or both. MCL 257.904e(5).

Transfers exempt from use tax. Transfers exempt from use tax under MCL 205.93(3) occur when:

- The transferee or purchaser has one of the following relationships to the transferor: spouse, mother, father, brother, sister, child, stepparent, stepchild, stepbrother, stepsister, grandparent, grandchild, legal ward, or a legally appointed guardian with a certified letter of guardianship.
- The transfer is a gift to a beneficiary in the administration of an estate.
- The vehicle has once been subjected to Michigan sales or use tax and is transferred in connection with the organization, reorganization, dissolution, or partial liquidation of an incorporated or unincorporated business and the beneficial ownership is not changed.
- An insurance company licensed to conduct business in this state acquires ownership of a late model distressed vehicle as defined in MCL 257.12a, through payment of damages in response to a claim or when the person who owned the vehicle before the insurance company reacquires ownership from the company as part of the settlement of a claim.

Which court may issue an order to allow sale of the vehicle? A vehicle's owner may not transfer a vehicle subject to vehicle sanctions without a court order to a person exempt from use tax. It is not clear which court may issue such an order. The circuit court has jurisdiction of appeals from adverse decisions made by a state agency. MCL 600.631 and MCR 7.104. In the case of a vehicle subject to an immobilization order, the order required to sell the vehicle is required because the Secretary of State has refused to allow the transfer of the vehicle to a person exempt from use tax. On the other hand, some courts believe that the court that issued the immobilization order may issue an order allowing such a sale.

1.16 May a Person Who Buys or Leases a Vehicle to Circumvent Vehicle Immobilization Be Punished?

MCL 257.233 prohibits the unlawful purchase or lease of a vehicle to circumvent immobilization. MCL 257.233(2) provides:

> "A person shall not purchase or lease another vehicle or an interest in another vehicle with the intent to

> circumvent the restrictions created by immobilization of a vehicle under this act."

Persons who violate this provision are subject to misdemeanor sanctions consisting of imprisonment for not more than one year or a fine of not more than $1,000.00, or both. MCL 257.233(5).

MCL 257.233 also prohibits the holder of assigned plates from failing to produce an old registration certificate or certificate of title upon application for a new registration certificate. MCL 257.233(6) provides:

> "If the assigned holder of registration plates applies for a new registration certificate, the application shall be accompanied either by the old registration certificate or by a certificate of title showing the person to be the assigned holder of the registration plates for which the old registration certificate had been issued."

Failure to comply with the foregoing requirements is a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than $100.00, or both. MCL 257.233(7).

1.17 May the Defendant Obtain Another Vehicle During the Immobilization Period?

During the immobilization period, the defendant is prohibited from purchasing or leasing another vehicle. MCL 257.904e(3) provides:

> "(3) A defendant who is prohibited from operating a motor vehicle by vehicle immobilization shall not purchase, lease, or otherwise obtain a motor vehicle during the immobilization period."

Violation of this provision is a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than $100.00, or both. MCL 257.904e(5).

1.18 What Are the Penalties for Removing an Immobilization Device or Driving an Immobilized Vehicle?

Removing, tampering with, or bypassing an immobilization device or attempting to do so is prohibited by MCL 257.904e(4). That statute states:

> "(4) A person shall not remove, tamper with, or bypass or attempt to remove, tamper with, or bypass a device that he or she knows or has reason to know has been

> installed on a vehicle by court order for vehicle immobilization . . . ."

Operating an immobilized vehicle or attempting to do so is prohibited by MCL 257.904e(4). That statute states:

> "(4) A person shall not . . . operate or attempt to operate a vehicle that he or she knows or has reason to know has been ordered immobilized."

Violation of either of the above prohibitions is a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than $100.00, or both. MCL 257.904e(5).

1.19 What Happens When a Police Officer Stops a Vehicle Driven in Violation of an Immobilization Order?

If a law enforcement officer stops a vehicle that is being driven in violation of an immobilization order, the vehicle will be impounded "pending an order of a court of competent jurisdiction." MCL 257.904e(7). MCL 257.904b governs impoundment procedures. The vehicle's owner is liable for the expenses of removal and storage. MCL 257.904b(4).

1.20 May the Court Revoke a Defendant's Probation for Failure to Comply With an Immobilization Order?

An order to have a vehicle immobilized may be made a condition of probation. MCL 771.3(1)(a) requires a sentence of probation to include the following condition:

> "During the term of his or her probation, the probationer shall not violate any criminal law of this state, the United States, or another state or any ordinance of any municipality in this state or another state."

MCL 771.3(4) allows the court to "impose other lawful conditions of probation as the circumstances of the case require or warrant or as in its judgment are proper." Thus, a criminal violation or violation of an immobilization order may be punished by revoking probation and sentencing the offender.

A court may institute probation violation proceedings for a violation of its immobilization order via issuance of an arrest warrant or a summons. After issuing a summons, several courts allow a defendant additional time to comply with the order. If the defendant complies with the immobilization

order by the date set for initiation of revocation proceedings, these courts may not order sanctions for the violation.

MCL 771.4 provides the sentencing court with broad discretion to revoke probation. That statute states in relevant part:

> "If during the probation period the sentencing court determines that the probationer is likely again to engage in an offensive or criminal course of conduct or that the public good requires revocation of probation, the court may revoke probation. All probation orders are revocable in any manner the court that imposed probation considers applicable either for a violation or attempted violation of a probation condition or for any other type of antisocial conduct or action on the probationer's part for which the court determines that revocation is proper in the public interest."

MCR 6.445(G) states in part that if the court finds that the probationer has violated a condition of probation, the court may continue probation, modify the conditions of probation, extend the probation period, or revoke probation and impose a sentence of incarceration. If the court finds that the probationer has violated a condition of probation, the court has discretion to continue or revoke probation. *People v Laurent,* 171 Mich App 503, 505 (1988).

1.21 May a Person Be Held in Contempt of Court for Failure to Comply With an Immobilization Order?

MCL 600.1701(g) contains the Revised Judicature Act's general provision regarding violations of court orders:

> "The supreme court, circuit courts, and all other courts of record, have power to punish by fine or imprisonment, or both, persons guilty of any neglect or violation of duty or misconduct in all of the following cases:
>
> . . . .
>
> "(g) Parties to actions, attorneys, counselors, and all other persons for disobeying any lawful order, decree, or process of the court."

A court may find persons who have violated a court order guilty of either civil or criminal contempt. *Ann Arbor v Danish News Co,* 139 Mich App 218, 231–32 (1984), and *State Bar v Cramer*, 399 Mich 116, 126–28 (1976).*

*For a discussion of the distinction between civil and criminal contempt proceedings, see *Contempt of Court Benchbook—Revised Edition* (MJI, 2000), Section 2.1.

A court may institute contempt proceedings for a violation of its immobilization order via an order to show cause or a bench warrant. After issuing an order to show cause, several courts allow the defendant additional time to comply with the order. If the defendant complies with the immobilization order by the date of a show-cause hearing, these courts may not order sanctions or may impose a fine.

Following a finding of civil contempt, the court may order any or all of the following sanctions:

- a coercive and conditional jail sentence to compel the contemnor to comply with an order of the court, MCL 600.1715(2);
- a fine and costs and expenses of the proceedings, MCL 600.1715(1)–(2);
- damages for loss or injury caused by the contumacious conduct, MCL 600.1721, including attorney fees incurred as a result of the contumacious conduct, *In re Contempt of Calcutt (Calcutt v Harper Grace Hospitals)*, 184 Mich App 749, 758 (1990).

Following a finding of criminal contempt, the court may order any or all of the following sanctions:

- an unconditional and fixed jail sentence of up to 30 days, MCL 600.1715(1);
- a fine of not more than $250.00, MCL 600.1715(1);
- damages caused by the contumacious conduct, MCL 600.1721, including attorney fees incurred as a result of the contumacious conduct, *In re Contempt of Calcutt (Calcutt v Harper Grace Hospitals)*, 184 Mich App 749, 758 (1990).

1.22 Are There Other Penalties for Failure to Comply With an Immobilization Order?

MCL 257.321a(1) imposes misdemeanor sanctions of up to 93 days imprisonment and/or a $100.00 fine for failure to comply with an order or judgment of the court.

In addition to misdemeanor sanctions, license suspension can result from a person's failure to comply with a judgment. Under MCL 257.321a(2)–(4), the court is required to notify the person that license suspension may result

from his or her inaction. If the person does not appear or comply with the court's order or judgment within a stated time after receiving notice from the court, the court must report this failure to the Secretary of State. Upon receipt of the report from the court, the Secretary of State is to immediately suspend the person's license.

1.23 What Are the Abstracting Requirements?

An abstract required under §732 of the Michigan Vehicle Code must indicate whether immobilization was ordered. An abstract must also indicate the vehicle identification and registration plate numbers, as well as the length and starting date of immobilization if ordered. MCL 257.732(3)(h)–(i).

Courts and the Secretary of State should promptly send and post changes to the defendant's driving record to ensure that an immobilization order is not circumvented.

Part 2—Appendixes

Michigan trial courts provided the following forms in response to a questionnaire regarding their vehicle immobilization practices. These forms are intended to illustrate the variety of procedures used by courts to immobilize vehicles pursuant to the applicable law.